

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.69 OF 2020

(Ramkrushna Kashiram Kapale and another Vs. State of Maharashtra thr. PSO PS
 Jalgaon Jamod, Dist. Buldhana and another)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.*

Court's or Judge's orders.

 Shri V.B. Bhise, Advocate for Appellant.
 Shri P.S. Tembhare, APP for Respondent 1/State.
 Shri S.S. Sohoni, Advocate for Respondent 2.

CORAM: ROHIT B. DEO, J.

DATE: 4th MARCH, 2020.

The appellant is challenging the order dated 21.01.2020 rendered by the Additional Sessions Judge, Khamgaon in ABA 23/2020 whereby the application preferred by the appellant for pre-arrest bail is rejected on the ground that there is a specific bar to grant pre-arrest bail in Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2] In my considered view, the learned Sessions Judge clearly erred in assuming that there is an absolute bar to grant of pre-arrest bail. It is well settled, that if a *prima facie* case or offence punishable under the Atrocities Act is not demonstrated, there is no impediment in granting pre-arrest bail. Notably, while the legislature intervened by introducing Section 18-A on the statute book to nullify directions (iii) and (iv) in *Dr. Subhash Kashinath Mahajan*

v. The State of Maharashtra and another reported in 2018 ALL MR (Cri) 1773 (S.C.), the articulation of the Supreme Court that there is no absolute fetter in granting anticipatory bail is not affected even by the amendment. The Supreme Court did review the decision in Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and another. However, even the review order proceed on the premise that there is no absolute bar to grant of pre-arrest bail.

3] Adverting to the facts, it is not in dispute that a community hall is being constructed adjacent to the residential house of the appellant. It is further not in dispute that an altercation took place on 14.01.2020 since part of the residential house of the appellant was damaged/demolished and that the appellant lodged first information report on 14.01.2020. The respondent 2 on the other hand lodged the report on the next day i.e. 15.01.2020. I am satisfied that the report was lodged as a counterblast. Of course, this is a *prima facie* observation. In any event, even if the entire report is taken at face value no offence punishable under the Atrocities Act is made out. The reference is to the word 'Chamat' which is supposed to be pejorative. Be that as it may, nothing is pointed out to this Court to suggest that any abuse on the name of the caste was hurled. That apart, whether the alleged utterance was in public view is also doubtful. In plethora of cases, the expression public view is considered. The fact that the

utterance is in public place may not necessarily lead to the inference that the utterance is in public view.

4] I am satisfied that the appeal needs to be allowed.

5] The order impugned is set aside.

6] In the event of arrest in Crime 19/2020 registered with Police Station Jalgaon Jamod, Tq. Jalgaon Jamod, District Buldhana for offences punishable under Section 323, 324, 354, 504, 506 of IPC and under Section 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, the applicant be released on furnishing P.R. bond of Rs.20,000/- with a surety of like amount.

JUDGE